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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DONALD L. STRATTON,

11 Plaintiff,

12 v.

13 K. REYNOLDS,

14 Defendant.

Case No. C08-5418RBL

REPORT AND
RECOMMENDATION TO
DISMISS COMPLAINT
WITHOUT PREJUDICE

Noted for October 17, 2008

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16 This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. §
17 636(b)(1)(B). This matter comes before the court upon plaintiff's request to withdraw his complaint
18 (Doc. 10). After reviewing plaintiff's motion, the undersigned recommends that the court GRANT the
19 motion and dismiss this matter without prejudice pursuant to Rule 41(a).

20 Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for
21 summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a
22 matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy
23 v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

24 Plaintiff filed his complaint with the court on or about June 27, 2008. The matter has not been served
25 on the defendant. Accordingly, plaintiff's request should be GRANTED, and this matter should be
26 dismissed without prejudice.

27 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
28 parties shall have ten (10) days from service of this Report to file written objections. *See also*

1 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of
2 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
3 clerk is directed to set the matter for consideration on **October 17, 2008**, as noted in the caption.

4 DATED this Monday, September 22, 2008.

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6 /s/ J. Kelley Arnold
7 J. Kelley Arnold
8 United States Magistrate Judge
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